IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

LCT CAPITAL, LLC,	)	
	)	
Plaintiff,	)	
v.	)	C.A. No. N15C-08-109 WCC CCLD
	)	
NGL ENERGY PARTNERS LP and NGL ENERGY HOLDINGS LLC,	)	
	)	
Defendants.	)	

Submitted: May 8, 2019
Decided: December 5, 2019

Defendants' Post-Trial Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial and Motion to Amend the Judgment
DENIED IN PART, GRANTED IN PART

MEMORANDUM OPINION

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CARPENTER, J.

Before the Court is Defendants NGL Energy Partners LP and NGL Energy Holdings LLC's (collectively, "NGL" or "Defendants") Post-Trial Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial and Motion to Amend the Judgment. Plaintiff LCT Capital ("Plaintiff" or "LCT") has also filed a Motion for Attorneys' Fees and Costs, as well as an Application for (I) Costs and (II) Pre-Judgment Interest and Setting the Post-Judgment Per-Diem Interest Rate.

The Court has rehashed the factual background of this case several times in its prior opinions, so for the purposes of these Motions, it will only provide a brief recitation of the facts.

I. FACTUAL AND PROCEDURAL BACKGROUND

In July 2014, NGL acquired the company TransMontaigne, a refined petroleum products distributor, from Morgan Stanley. This acquisition and the role of outside advisors, specifically investment banking company LCT Capital and its CEO Lou Talarico ("Talarico"), are at the center of this ongoing dispute. Plaintiff LCT played a large and pivotal role in NGL's acquisition of TransMontaigne and, as a result, it sought unique payment for its services. As evidenced throughout this litigation, NGL's CEO Mike Krimbill ("Krimbill") did not deny that LCT played a significant role in the TransMontaigne acquisition that justified a fee beyond what is normally utilized in the industry and attempts were made to negotiate a special finder's fee for LCT's services. Unfortunately, instead of doing what would be good business practice and clearly setting forth the apparent agreement in a written document, the parties spent over a year "dancing around" the fee issue and discussing how the commitment made by Defendants' CEO could be accomplished. With no progress and Krimbill's failure to live up to his commitment, LCT initiated the instant litigation in August 2015. LCT filed its Amended Complaint on September 29, 2015.

On July 19, 2018, the Court dismissed Plaintiff's breach of contract and unjust enrichment claims, but allowed two remaining claims to proceed to trial—quantum meruit and fraudulent misrepresentation. A jury trial took place from July 23, 2018 until August 1, 2018. After the close of evidence, Defendants moved for a directed verdict on LCT's fraudulent misrepresentation claim, arguing that:

> (a) LCT had not sought or proved any separate or additional damages for fraud beyond compensation for its services; (b) the jury's predicate finding about the value of those services was determinative on the damages question; and (c) LCT's damages presentation created a significant risk of jury confusion, especially if there was a second damages blank.[1]

The Court initially reserved decision, expressing concerns about the damages for quantum meruit and fraudulent misrepresentation being the same, but later denied Defendants' motion. The jury later found for Plaintiff on both claims and returned a verdict awarding LCT $4 million for quantum meruit and a separate $29 million for fraudulent misrepresentation.

[1] Defs.' Mot. J. as a Matter of L. or in Alt. for New Trial and Mot. to Amend J. at 4 [hereinafter Defs.' Mot.].

Presently, the Defendants have utilized both avenues of potential relief following an adverse verdict from a civil jury trial, having filed a motion for judgment as a matter of law pursuant to Superior Court Civil Rule 50(b), and in the alternative, for a new trial. On April 11, 2019, the Court heard oral arguments on Defendants' Motion.

Plaintiff has also filed a post-trial Motion for Attorneys' Fees and Costs and an Application for (I) Costs and (II) Pre-Judgment Interest and Setting the Post-Judgment Per-Diem Interest Rate. This is the Court's decision on all outstanding Motions.

II. STANDARD OF REVIEW

Pursuant to Superior Court Civil Rule 50(b):

> Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion.... If a verdict was returned, the Court may ... allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law.[2]

Under Rule 50, this Court is required to view the evidence in the light most favorable to the nonmoving party.[3] Utilizing that standard this Court "must determine whether the evidence and all reasonable inferences that can be drawn therefrom" could justify

[2] Del. Super. Ct. Civ. R. 50(b).
[3] *Mumford v. Paris*, 2003 WL 231611, at *2 (Del. Super. Ct. Jan. 31, 2003).

a jury verdict in favor of the Plaintiff.[4] In order to find for the moving party, this Court must find that "'there is no legally sufficient evidentiary basis for a reasonable jury to find for [the non-movant].'"[5] Thus, "the factual findings of a jury will not be disturbed if there is *any* competent evidence upon which the verdict could reasonably be based."[6]

"A motion for a new trial under Rule 59 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative."[7] In considering a motion for new trial, the Court should give the jury's verdict "enormous deference,"[8] and "should not set aside a verdict…unless, on review of all the evidence, the evidence preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result."[9] "A new trial should be granted only when the great weight of the evidence is against the jury verdict."[10]

III. DISCUSSION

Even though the Defendants are legally allowed to file a motion for judgment as a matter of law and a motion for new trial, the Delaware Supreme Court has held:

> A motion for judgment notwithstanding the verdict and a motion for a new trial are not interchangeable since they serve entirely different

[4] *Blue Hen Lines, Inc. v. Turbitt*, 787 A.2d 74, 78 (Del. 2001).
[5] Del. Super. Ct. Civ. R. 50(a).
[6] *Mumford v. Paris*, 2003 WL 231611, at *2 (Del. Super. Ct. Jan. 31, 2003) (citing *Delaware Elec. Coop. Inc. v. Pitts*, 1993 WL 445474 at *1 (Del. Oct. 22, 1993) (quoting *Mercedes-Benz v. Norman Gershman's*, 596 A.2d 1358 (Del.1991)) (emphasis added)).
[7] Del. Super. Ct. Civ. R. 50(b).
[8] *Cuonzo v. Shore*, 958 A.2d 840, 844 (Del. 2008).
[9] *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979); *see also Town of Cheswold v. Vann*, 9 A.3d 467, 472 (Del. 2010).
[10] *Patterson v. Coffin,* 854 A.2d 1158 (Del. 2004).

> purposes. When passing on a motion for judgment as a matter of law, the court does not weigh the evidence but rather, views the evidence in a light most favorable to the non-moving party and, drawing all reasonable inferences therefrom, determines if a verdict may be found for the party having the burden. In contrast, when considering a motion for a new trial, the court weighs the evidence in order to determine if the verdict is one which a reasonably prudent jury would have reached.[11]

While several legal arguments were advanced by Defendants with regard to each Motion, when one looks to the heart of the dispute, there are really only two issues. First, under the Motion for Judgment standard, the issue is whether the evidence supported the fraudulent misrepresentation claim. The second is whether the damage award is one that a reasonable jury would have reached, which determines whether a new trial is warranted. Applying these standards and the Delaware Supreme Court's holding, the Court will now address these arguments.

A. MOTION FOR JUDGMENT AS A MATTER OF LAW

Defendants contend that the fraudulent misrepresentation claim should have been dismissed at the summary judgment stage and not have been permitted to go to trial. Defendants argue that there was no justifiable reliance based on the evidence and that the Court used the wrong legal standard when analyzing this claim in its Memorandum Opinion.[12] Defendants also assert that the Court erred by allowing

[11] *Mumford v. Paris*, 2003 WL 231611, at *2 (Del. Super. Ct. Jan. 31, 2003).
[12] *Id.* at 13.

negligent or innocent misrepresentation language to be included in the jury instructions.[13]

While the Court questions the appropriateness of reviewing after trial an issue relating to its prior Opinion, the Court disagrees with Defendants and finds that the legal standard in its Memorandum Opinion was correct. The Court stated that, for fraudulent misrepresentation, a defendant's representation does not need to be overt.[14] It went on to state that:

> [r]ather, a defendant's deliberate concealment of a material fact or silence in the face of a duty to speak is sufficient for a claim of intentional misrepresentation. Moreover, the term 'misrepresentation' is sufficiently broad to encompass fraudulent, negligent, or even innocent statements.[15]

None of this language conflicts with the Second Restatement of Contracts or with the Delaware Supreme Court's previous holdings. In fact, a 1960 Delaware Supreme Court case held that, in a fraud claim, the deceiver need not have knowledge of his/her false representation, rather a deceiver must ". . . recklessly make the representation without heed for its validity, or makes it under circumstances not justifying belief in its truth."[16] Additionally, the Second Restatement of Contracts, states that:

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[13] *Id.* at 14.

[14] *LCT Capital, LLC v. NGL Energy Partners LP, et al.*, Del. Super. Ct., C.A. N15C-08-109, Carpenter, J. (July 19, 2018) (Mem. Op.).

[15] *Id.*

[16] *Twin Coach Company v. Chance Vought Aircraft, Inc.*, 163 A.2d 278, 284 (Del. 1960).

> [a] misrepresentation is fraudulent if the maker intends his assertion to induce a party to manifest his assent and the maker
> (a) knows or believes that the assertion is not in accord with the facts, or
> (b) does not have the confidence that he states or implies in the truth of the assertion, or
> (c) knows that he does not have the basis that he states or implies for the assertion.[17]

This is no different from what the Court stated. The Court simply rephrased the wording for the purposes of its Opinion. The Court's jury instructions on this issue state:

> NGL's representation does not need to have been overt. Rather, NGL's deliberate concealment of a material fact or silence in the face of a duty to speak is sufficient for a claim of intentional misrepresentation. Moreover, the term "misrepresentation" is sufficiently broad to encompass fraudulent, negligent or even innocent statements.[18]

Viewing the evidence in a light most favorable to Plaintiff, the non-moving party, the Court believes that the jury instructions were proper and Plaintiff met its burden for the fraudulent misrepresentation claim. The Court has no question that there was sufficient evidence for the jury to find that NGL made fraudulent representations to Plaintiff regarding its fee arrangement. In fact, the evidence was overwhelming that Krimbill failed to be candid and honest in his dealings with Plaintiff, he misled Talarico regarding his authority to authorize the compensation they agreed to, and he continued the pattern of misrepresentation for a significant

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[17] Restatement (Second) of Contracts § 164, Cmt. B (1981).
[18] Jury Instructions at 6.

period of time. While Talarico may have been foolish and naïve to rely upon Krimbill's representation without a clear written agreement, there is no doubt that Krimbill took advantage of the situation to Plaintiff's detriment. Even sophisticated businessmen have the right to expect some semblance of honesty and candor in their dealings, and Krimbill's conduct fell way below any reasonable ethical standards. It was not unreasonable for Talarico to believe Krimbill could deliver on the compensation they discussed and to rely on those representations.

Krimbill's conduct at best demonstrates that he made a commitment he later found he could not live up to. In spite of numerous attempts to honor the commitment clearly made to Talarico, he eventually was unable to manipulate his Board to accomplish the task. It is clear the jury agreed with Plaintiff that NGL, specifically Krimbill, misled Plaintiff on numerous occasions to believe a unique fee arrangement was both plausible and going to happen, and there was evidence that would clearly support this conclusion. Krimbill's testimony was unbelievable, and it was supported by several other witnesses who were less than candid or credible. The Defendants lost at trial not because of poor lawyering, but rather because those associated with NGL were simply not credible. There is no basis to overturn the jury's considered judgment and there is a reasonable basis in the record to support the jury's finding of fraudulent misrepresentation and the verdict will not be disturbed.

B. NEW TRIAL - DAMAGES

Defendants next argue that Plaintiff asserted a unitary damages theory at trial, and failed to present separate damages theories for its claims of fraudulent misrepresentation and quantum meruit.[19] As a result, Defendants assert that the fraudulent misrepresentation claim has merged into the quantum meruit claim, limiting LCT's ability to recover.[20] Defendants further argue "[e]ven had LCT presented two different damages theories . . . , well-established and controlling law requires that, in the absence of LCT being induced to enter a contract . . . , any recovery for fraudulent misrepresentation is limited to LCT's actual pecuniary loss for the value of its services . . . ."[21] Because there was never a binding contract between LCT and NGL, Defendants argue that LCT's award cannot exceed the value of its services, which the jury found to be $4 million.[22]

The parties' briefing has focused on whether Plaintiff is entitled to the "benefit of the bargain" since it is clear the jury's damage award for fraudulent misrepresentation equated to the alleged agreed upon compensation between Mr. Talarico and Mr. Krimbill minus the dispute regarding taxes. Thus, Defendants argue Plaintiff received damages equal to the "benefit-of-the-bargain" they never entered into. The Court has reviewed all of the cases argued by the parties in their

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[19] Defs.' Mot. at 1.
[20] *Id.* at 3.
[21] *Id.* at 2.
[22] *Id.* at 9.

briefs and it appears that the precise issue of whether an enforceable contract is required in order for a plaintiff to recover benefit-of-the-bargain damages in a fraud case remains unsettled in Delaware.

In *Harmon v. Masoneilan Intern., Inc.*, the Delaware Supreme Court considered the damages available in fraud cases at law, as compared to fraud cases in equity.[23] A minority shareholder alleged that a majority shareholder breached their fiduciary duty in approving a merger allegedly fraudulent to the minority shareholders by executing a materially false and misleading proxy statement, which coerced the minority's vote.[24] In contrast to the discretion in awarding relief in equitable suits, the Court noted that damages for fraud at law "are generally limited to those which are the direct and proximate result of the false representation and which represent the 'loss-of-the-bargain' or actual 'out-of-pocket' loss."[25] As the action was found to lie exclusively within equity's jurisdiction, the Court did not address or further distinguish when damages based on loss-of-the-bargain are recoverable and when damages based on out-of-pocket loss are recoverable in fraud at law cases.

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[23] *Harman v. Masoneilan Int'l, Inc.*, 442 A.2d 487, 499 (Del. 1982).
[24] *Id.* at 489.
[25] *Id.* at 499 ("On the other hand, (e)quity adopts its decrees to fit the nature and gravity of the breach and the consequences to the beneficiaries and trustee. The choice of relief to be accorded a prevailing plaintiff in equity is largely a matter of discretion with the Chancellor.") (internal citations omitted).

In *Stephenson v. Capano Development, Inc.*, the Delaware Supreme Court addressed the damages available under the Consumer Fraud Act for fraudulent statements relating to mortgage financing and the purchase of real estate. The Court allowed an element of damages to "include the difference between the interest rates which [defendant] falsely represented were available and the interest rate which this plaintiff is now required to pay," noting that plaintiff had an option contract to purchase a townhouse and that plaintiff repeatedly "made it clear" that the corresponding advertised financing was of "material significance" to the option.[26]

In the instant matter, Plaintiff relies on the following quote from *Stephenson*:

> The most common and accepted standard is the benefit of the bargain rule. Under it the plaintiff recovers the difference between the actual and the represented values of the object of the transaction. The aim of this method is to put the plaintiff in the same financial position that he would have been in if the defendant's representations had been true.[27]

However, Plaintiff disregards the fact that, in *Stephenson,* the plaintiff had an option contract to buy a house, on which the benefit-of-the-bargain damages would be based.[28] The Court found that the financing terms were neither "independent [nor] divisible from the sale of the land."[29]

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[26] *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1071 (Del. 1983).
[27] *Id.* at 1076.
[28] The Court remanded the case for a determination of damages consistent with their opinion. *Id.* at 1070, 1077 ("Following her successful suit in the Court of Chancery for specific performance of an option contract to buy a house, [plaintiff] sued [defendant] in Superior Court, alleging that [defendant] violated the Act and the Uniform Deceptive Trade Practices Act (6 *Del.C.* §§ 2531–36) in the sale of that house.").
[29] *Id.* at 1075.

In *Clark v. Teeven Holding Co., Inc.*, the Court of Chancery held that a defrauded purchaser could "elect to affirm the challenged contract and seek money damages" in an action at law, or "elect to disaffirm the contract and . . . have an equitable action for rescission."[30] While it affirmed the benefit-of-the-bargain rule for damages when an enforceable contract is present, it did not address the damages available in a fraud case in the absence of an enforceable contract.

In *Shuttleworth v. Abramo*, while in a notably different factual context, the Delaware Supreme Court perhaps made its most definite statement on the recovery of benefit-of-the-bargain damages for a fraud claim.[31] The plaintiff's contract claims were time barred and so "any alleged or actual contract . . . [could not] thus be enforced."[32] In the absence of a contract, the Court found that the only remedy available for the remaining fraud claim was restitution, which would "restore the plaintiff to her position prior to" the fraud.[33] In addressing the issue, Chancellor Allen wrote:

> In the paradigmatic fraud case, plaintiff has been induced to rely on defendant's knowing misrepresentations to take action to her financial detriment. Such a transaction between plaintiff and defendant typically involves inducement to form a contract. Under such circumstances, plaintiff may bring suit under a contract theory (treating the misrepresentation as a covenant) or may sue in tort using a fraud theory either as a ground for recovery of damages or as a defense to an action on the contract by the promisee. She may then elect to affirm the

[30] *Clark v. Teeven Holding Co.*, 625 A.2d 869, 877 (Del. Ch. 1992).
[31] *Shuttleworth v. Abramo*, 1994 WL 384428, at *6 (Del. July 14, 1994).
[32] *Id.*
[33] *Id.*

> contract and seek expectancy damages (i.e., to recover the benefit of her bargain), to rescind and be awarded restitution. In either event she may recover special damages caused by the deceit. The restitution remedy is retrospective, returning both plaintiff and defendant to their original positions, as if the fraudulent transaction had never occurred. When the action is on the promise, however, the prospective award of expectancy damages for the breach of an affirmed contract is available.[34]

While affirming that benefit-of-the-bargain damages are available in a fraud case, the decision centers around damages available when one is induced to enter into a contract as a result of the fraudulent conduct. The Court went on to state that when a contract is not present:

> The remedy for the remaining fraud claim, if there is to be one, is restricted to restitution, through which the court must endeavor to restore the plaintiff to her position prior to her husband's alleged misrepresentations, or actual damages.[35]

In *Tam v. Spitzer*, the Court of Chancery considered the remedy available for a buyer of a business who alleged that they were fraudulently induced to enter the transaction. The Court noted, "[w]here, as here, a party is fraudulently induced to enter into a contract," the party may either seek damages at law or rescission in equity.[36] In its discussion, the Court affirmed that the damages available in a case with an enforceable contract were the "benefit of the bargain i.e. the difference between the actual and the represented values of the object of the transaction."[37]

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[34] *Id.* (internal citations omitted).
[35] *Id.*
[36] *Tam v. Spitzer*, 1995 WL 510043, at *10 (Del. Ch. Aug. 17, 1995).
[37] *Id.* at *12 (internal quotations omitted).

In *E.I. DuPont de Nemours & Co. v. Florida Evergreen Foliage*, the Delaware Supreme Court held that a party who was fraudulently induced to execute a contract "may opt either for rescission or a separate suit for fraud with damages calculated on the difference between that received under the release and the value of the settlement or recovery achieved had there been no fraud by the released party." [38] However, this case again does not discuss what damages may be available in the absence of an executed contract.

As it appears that Delaware Courts have not settled the issue of whether an enforceable contract is required in order for a plaintiff to recover benefit-of-the-bargain damages in a fraud case, Defendants cite to various other jurisdictions that have answered this question.

In *Roboserve, Inc. v. Kato Kagaku Co., Ltd.*, the Seventh Circuit determined the following:

> Where a misrepresentation induced the victim to consummate the bargain, benefit-of-the-bargain damages are appropriate to give the victim the rewards he reasonably expected under the contract. Such damages are clearly not appropriate, however, in the absence of an actual, binding agreement. Damages for common law fraud are not intended to restore what one never had.[39]

[38] *E.I. DuPont de Nemours & Co. v. Fla. Evergreen Foliage*, 744 A.2d 457, 458 (Del. 1999).
[39] *Roboserve, Inc. v. Kato Kagaku Co.*, 78 F.3d 266, 274 (7th Cir. 1996).

The parties in the case had engaged in protracted contract negotiations, but failed to execute a binding contract. Without an enforceable contract, the Court determined the party was only "entitled to recover out-of-pocket losses attributable to [the defendant's] misrepresentations."[40]

In *Bohnsack v. Varco*, the Fifth Circuit reviewed the benefit-of-the-bargain damages that were awarded by a jury in a fraud case without an enforceable contract.[41] They noted "Courts have refused to award benefit-of-the-bargain damages in the absence of an enforceable contract" and are "normally not appropriate measures of damages for common law fraud claims."[42]

A review of the cases clearly reflects that where there is a formal contractual relationship between the parties, benefit-of-the-bargain damages can be obtained. This is not surprising as, in most cases, the contractual agreement has occurred as a result of, or been influenced by, the fraudulent conduct. It is only fair then to allow the aggrieved party to recover what would have been the bargain without the fraud. Unfortunately, the facts here do not fit the traditional benefit-of-the-bargain case law as there is no formal agreement to "affirm" and thus seek the benefit of the contract nor is there any contract to "rescind" to restore the parties to status quo ante.

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[40] *Id.*
[41] *Bohnsack v. Varco, L.P.*, 668 F.3d 262, 275 (5th Cir. 2012).
[42] *Id.* at 275-76.

Based on the above, the Court concludes that to get damages under the benefit-of-the-bargain concept, the contractual bargain must have been created and formalized. Without such structure, the discussions between the parties are simply negotiating positions to which a meeting of the mind has not been finalized. While perhaps incredibly unfair to the unique factual setting of this case in light of the reprehensible conduct of the Defendants, the Court must find you do not get the bargain if it is not clearly created.

Unfortunately, the Court does not believe this resolves the dispute. Plaintiff has proceeded under two theories of liability and the Court has found there to be a sufficient basis for both, but it is clear that evidence was only presented on a single unitary claim for damages. As such, the question here is not whether Plaintiff is entitled to the benefit-of-the-bargain, but what is the real value of the services Plaintiff provided. Unfortunately, the Court's decision to include an opportunity for the jury to set forth separate damage awards for both quantum meruit and fraudulent misrepresentation has simply muddied the damage award to the point that it is impossible to determine what the jury believed was a fair and reasonable determination of the real damages here. The Court should have only allowed a single damage award for both claims since that is the damage theory presented by Plaintiff. Now the Court is faced with the dilemma of how to fairly determine whether the jury would have reached a single award of $4 million, suggested by Defendants, or a single award of $29 million plus, suggested by Plaintiff, or something in between.

The Court, in attempting to resolve this dispute, has struggled to come to a fair resolution of this dispute. Unfortunately, the Court could foresee the possibility that if a single damage figure was requested, the jury could have decided the compensation agreed to by Krimbill of more than $29 million was the fair and reasonable compensation for the unique services provided and they only divided the damages on the verdict sheet because they were requested to do so. On the other hand, perhaps they would have accepted Defendants' theory of a reasonable compensation of the standard investment banker fee and only awarded $4 million. The Court is simply not willing to accept Defendants' assertion that only the quantum meruit award here represents the damages that the jury believed was fair compensation for the unique services Plaintiff provided. Even Krimbill, by his actions and conduct before litigation, believed compensation beyond the norm was appropriate. As a result of the confusion created by the verdict sheet, it is simply unable to discern what the jury intended with its verdict. At the end of the day, the Court finds the only appropriate recourse is to order a new trial on damages only. The Court appreciates that this will not reduce the length of the retrial significantly or the evidence that will be relevant to the damage issue, but a fair conclusion to this dispute is unable to be accomplished otherwise.[43]

Frankly, the parties have taken unreasonable positions that have not helped resolve this dispute. Perhaps distrust or animosity between the parties has created this perception, but reasonable rational businessmen could find a fair middle ground that fairly compensates the Plaintiff and returns some sense of good faith by the Defendants. If litigation posturing was taken out of the case, the Court suggests even the Defendants believe more than the standard investment banking fee was warranted here. On the other hand, Plaintiff needs to recognize that his fee request was clearly unusual, difficult to accomplish, and perhaps stretched the field of reasonableness. The jury has found the Defendants' conduct fraudulent, that Plaintiff is entitled to compensation, and that decision will not change. Now it is simply either finding a number that both parties can live with or asking the jury to again decide. At least now the parties have some perception of what a jury may find to be reasonable, which may inspire settlement discussions.

As a result, Defendants' Motion for a New Trial, limited to damages, will be granted. While the Court will work with counsel to establish a new trial date, it

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[43] *See LCT Capital, LLC v. NGL Energy Partners LP, et al.*, Del. Super. Ct., C.A. N15C-08-109, at 24, Carpenter, J. (July 19, 2018) (Mem. Op.).

would prefer to retry the matter in the July to September, 2020 rotation. The Court would ask counsel to advise it of their availability during those months.

C. PLAINTIFF'S MOTIONS

As a result of the Court ordering a new trial on damages, Plaintiff's Motion for Attorneys' Fees and Costs and Application for Costs and Pre-Judgment Interest and Post-Judgment Per-Diem Interest Rate have been mooted until the next trial concludes.

IV. CONCLUSION

NGL's Motion for Judgment as a Matter of Law is **DENIED**. Its Motion for a New Trial is **GRANTED**, but limited to the issue of damages.

IT IS SO ORDERED.

Judge William C. Carpenter, Jr.